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7 and Leon Limon

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 KEVIN J. FARRER,

Case No.: C 08 00493 (EMC)

11 Plaintiff,

DEFENDANTS' ANSWER TO
COMPLAINT

12 -vs-

AND

13 CITY OF HAYWARD, LEON LIMON, in his
individual and official capacity as a police officer
14 for the CITY OF HAYWARD, ERNEST KNOX,
in his individual and official capacity as a
15 Security Officer for Chabot College,

DEMAND FOR TRIAL BY JURY

16 Defendants.
17 _____/

18
19 Defendants City of Hayward and Leon Limon respond to plaintiff's complaint for
20 damages, as follows:

21 1. Defendants have insufficient information and knowledge to respond to the
22 allegations contained in paragraph 1 of plaintiff's complaint, and, on that basis, deny generally
23 and specifically each and every allegation contained in said paragraph.

24 2. Defendants have insufficient information and knowledge to respond to the
25 allegations contained in paragraph 2 of plaintiff's complaint, and, on that basis, deny generally
26 and specifically each and every allegation contained in said paragraph.

27 3. Defendants admit that the City of Hayward is a municipal corporation, otherwise

1 defendants deny generally and specifically each and every remaining allegation of paragraph 2.4
2 of plaintiff's complaint.

3 4. Defendants admit that Leon Limon was/is a Hayward Police Department officer,
4 otherwise defendants deny generally and specifically each and every remaining allegation of
5 paragraph 2.6 of plaintiff's complaint.

6 5. Defendants admit that plaintiff purports to invoke the jurisdiction of the court
7 pursuant to Title 28, United States Code Sections 1331 and 1343, otherwise defendants deny
8 generally and specifically each and every remaining allegation of paragraph 3 of plaintiff's
9 complaint.

10 6. Defendants have insufficient information and knowledge to respond to the
11 allegations contained in paragraph 4 of plaintiff's complaint, and, on that basis, deny generally
12 and specifically each and every allegation contained in said paragraph.

13 7. Defendants have insufficient information and knowledge to respond to the
14 allegations contained in paragraph 5 of plaintiff's complaint, and, on that basis, deny generally
15 and specifically each and every allegation contained in said paragraph

16 8. Defendants have insufficient information and knowledge to respond to the
17 allegations contained in paragraph 6 of plaintiff's complaint, and, on that basis, deny generally
18 and specifically each and every allegation contained in said paragraph.

19 9. Defendants have insufficient information and knowledge to respond to the
20 allegations contained in paragraph 7 of plaintiff's complaint, and, on that basis, deny generally
21 and specifically each and every allegation contained in said paragraph.

22 10. Defendants have insufficient information and knowledge to respond to the
23 allegations contained in paragraph 8 of plaintiff's complaint, and, on that basis, deny generally
24 and specifically each and every allegation contained in said paragraph.

25 11. Defendants have insufficient information and knowledge to respond to the
26 allegations contained in paragraph 9 of plaintiff's complaint, and, on that basis, deny generally
27 and specifically each and every allegation contained in said paragraph.

1 12. Defendants have insufficient information and knowledge to respond to the
2 allegations contained in paragraph 10 of plaintiff's complaint, and, on that basis, deny generally
3 and specifically each and every allegation contained in said paragraph.

4 13. Defendants have insufficient information and knowledge to respond to the
5 allegations contained in paragraph 11 of plaintiff's complaint, and, on that basis, deny generally
6 and specifically each and every allegation contained in said paragraph.

7 14. Defendants have insufficient information and knowledge to respond to the
8 allegations contained in paragraph 12 of plaintiff's complaint, and, on that basis, deny generally
9 and specifically each and every allegation contained in said paragraph.

10 15. Defendants have insufficient information and knowledge to respond to the
11 allegations contained in paragraph 13 of plaintiff's complaint, and, on that basis, deny generally
12 and specifically each and every allegation contained in said paragraph.

13 16. Defendants have insufficient information and knowledge to respond to the
14 allegations contained in paragraph 14 of plaintiff's complaint, and, on that basis, deny generally
15 and specifically each and every allegation contained in said paragraph.

16 17. Defendants have insufficient information and knowledge to respond to the
17 allegations contained in paragraph 15 of plaintiff's complaint, and, on that basis, deny generally
18 and specifically each and every allegation contained in said paragraph.

19 18. Defendants have insufficient information and knowledge to respond to the
20 allegations contained in paragraph 16 of plaintiff's complaint, and, on that basis, deny generally
21 and specifically each and every allegation contained in said paragraph.

22 19. Defendants have insufficient information and knowledge to respond to the
23 allegations contained in paragraph 17 of plaintiff's complaint, and, on that basis, deny generally
24 and specifically each and every allegation contained in said paragraph.

25 20. Defendants have insufficient information and knowledge to respond to the
26 allegations contained in paragraph 18 of plaintiff's complaint, and, on that basis, deny generally
27 and specifically each and every allegation contained in said paragraph.

1 21. Defendants have insufficient information and knowledge to respond to the
2 allegations contained in paragraph 19 of plaintiff's complaint, and, on that basis, deny generally
3 and specifically each and every allegation contained in said paragraph.

4 22. Defendants have insufficient information and knowledge to respond to the
5 allegations contained in paragraph 20 of plaintiff's complaint, and, on that basis, deny generally
6 and specifically each and every allegation contained in said paragraph.

7 23. Defendants have insufficient information and knowledge to respond to the
8 allegations contained in paragraph 21 of plaintiff's complaint, and, on that basis, deny generally
9 and specifically each and every allegation contained in said paragraph.

10 24. Defendants have insufficient information and knowledge to respond to the
11 allegations contained in paragraph 22 of plaintiff's complaint, and, on that basis, deny generally
12 and specifically each and every allegation contained in said paragraph.

13 25. Defendants have insufficient information and knowledge to respond to the
14 allegations contained in paragraph 23 of plaintiff's complaint, and, on that basis, deny generally
15 and specifically each and every allegation contained in said paragraph.

16 26. Defendants have insufficient information and knowledge to respond to the
17 allegations contained in paragraph 24 of plaintiff's complaint and, on that basis, deny generally
18 and specifically each and every allegation contained in said paragraph.

19 27. Defendants have insufficient information and knowledge to respond to the
20 allegations contained in paragraph 25 of plaintiff's complaint and, on that basis, deny generally
21 and specifically each and every allegation contained in said paragraph.

22 28. Defendants have insufficient information and knowledge to respond to the
23 allegations contained in paragraph 26 of plaintiff's complaint and, on that basis, deny generally
24 and specifically each and every allegation contained in said paragraph.

25 29. Defendants have insufficient information and knowledge to respond to the
26 allegations contained in paragraph 27 of plaintiff's complaint and, on that basis, deny generally
27 and specifically each and every allegation contained in said paragraph.

1 30. Defendants have insufficient information and knowledge to respond to the
2 allegations contained in paragraph 28 of plaintiff's complaint and, on that basis, deny generally
3 and specifically each and every allegation contained in said paragraph.

4 31. Defendants have insufficient information and knowledge to respond to the
5 allegations contained in paragraph 29 of plaintiff's complaint, and, on that basis, deny generally
6 and specifically each and every allegation contained in said paragraph.

7 32. Defendants have insufficient information and knowledge to respond to the
8 allegations contained in paragraph 30 of plaintiff's complaint, and, on that basis, deny generally
9 and specifically each and every allegation contained in said paragraph.

10 33. Defendants have insufficient information and knowledge to respond to the
11 allegations contained in paragraph 31 of plaintiff's complaint, and, on that basis, deny generally
12 and specifically each and every allegation contained in said paragraph.

13 34. Defendants have insufficient information and knowledge to respond to the
14 allegations contained in paragraph 32 of plaintiff's complaint, and, on that basis, deny generally
15 and specifically each and every allegation contained in said paragraph.

16 **AFFIRMATIVE DEFENSES**

17 AS A FIRST AFFIRMATIVE DEFENSE to each cause of action of plaintiff's complaint,
18 defendants allege that they are immune from liability for the acts and omissions alleged in
19 plaintiff's complaint by virtue of the provisions of Sections 815, 815.2, 815.6, 818, 818.8, 820.2,
20 820.4, 820.8, 821.6, 822.2, 844.6 and 845.6 of the California Government Code.

21 AS A SECOND AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
22 complaint, defendants allege that neither plaintiff's complaint nor any of its alleged causes of
23 action state facts sufficient to constitute a cause of action against defendants.

24 AS A THIRD AFFIRMATIVE DEFENSE to each cause of action of plaintiff's complaint,
25 defendants allege that plaintiff did not use the heightened pleading standards as required by City
26 of Canton v. Harris, 489 U.S. 378 (1989) and its progeny, and have thus failed to state a cause of
27 action against defendant police officers in their individual capacities.

1 AS A FOURTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
2 complaint, defendants allege that they are immune from liability for the arrest, detention and
3 restraint of plaintiff pursuant to the provisions of California Welfare and Institutions Code Section
4 5154, Government Code Section 856, and Penal Code Sections 835, 835a, 836, and 847, in that
5 the officers had reasonable suspicion/probable cause to believe that plaintiff had committed a
6 public offense/was a danger to others, or to himself, or gravely disabled, and that any and all force
7 used in effecting his arrest, detention and restraint, was lawful, reasonable, and necessary, under
8 the circumstances at the time of the incident.

9 AS A FIFTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's complaint ,
10 defendants allege that at the time and place mentioned in plaintiff's complaint, defendants' use of
11 force, if any there was, was necessary for defendants' self defense, defense of others, and to effect
12 the lawful detention/arrest of plaintiff.

13 AS A SIXTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's complaint ,
14 defendants allege that they are entitled to qualified and official immunity. Defendants acted at all
15 times in good faith, with due care, within the scope of discretion, and pursuant to laws,
16 regulations, rules, and practices reasonably believed to be in accordance with the Constitution and
17 laws of the United States. There is no liability pursuant to the Federal Civil Rights Act where one
18 acts in good faith and entertains an honest, reasonable belief that one's actions are in accord with
19 clearly established law.[Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982) ; Saucier v. Katz, 533
20 U.S. 194 (2001); Smith v. Hemet, 394 F.3d 689 (9th Cir. 2005).]

21 AS A SEVENTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
22 complaint, defendants allege that plaintiff was comparatively at fault in the manner and style as
23 set forth in Li v. Yellow Cab Company, 13 Cal.3d 804 (1975), and defendants pray that any and
24 all damages sustained by plaintiff be reduced by the percentage of his own negligence in the
25 happenings herein.

26 AS AN EIGHTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
27 complaint, defendants allege that the damages sustained by plaintiff, if any, were proximately

1 caused, in whole or in part by others for whom these answering defendants are neither liable or
2 responsible. Should defendants be found to be liable to plaintiff, which liability is expressly
3 denied, said defendants are entitled to have any award against them abated, reduced, or eliminated
4 to the extent that the negligence, carelessness, or fault of any of said other persons or entities
5 contributed to plaintiff's damages, if any there were.

6 AS A NINTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's complaint,
7 defendants allege that plaintiff's complaint exceeds the scope of the claim presented to defendant
8 City of Hayward pursuant to California Government Code §§910 and 911.2.

9 AS A TENTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
10 complaint, defendants allege that plaintiffs' complaint fails to state a cause of action against these
11 defendants under the holding in Monell v. Department of Social Services of the City of New York
12 436 U.S. 658 (1978), and its progeny.

13 AS AN ELEVENTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
14 complaint, defendants allege that the outcome of the incidents alleged in plaintiff's complaint
15 would have been the same regardless of any additional or different training which might have
16 been provided to the officers involved.

17 AS A TWELFTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
18 complaint, defendants allege that at all relevant times, defendants acted independently and not in
19 association or concert with any agent or servant of any other defendant, including defendants sued
20 herein under the fictitious names of their employer, employees or agents.

21 AS A THIRTEENTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
22 complaint, defendants allege that plaintiff has failed to mitigate her damages.

23 AS A FOURTEENTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
24 complaint, defendants allege that plaintiff willingly, voluntarily, and knowingly assumed each,
25 every, and all of the risks and hazards involved in the activities alleged in the complaint.

26 AS A FIFTEENTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
27 complaint, defendants allege that plaintiff's and Solis' own conduct estops plaintiff from claiming

1 the damages alleged in plaintiff's complaint.

2 AS A SIXTEENTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
3 complaint, defendants allege that defendants are entitled to reasonable attorney's fees and costs of
4 suit upon prevailing within the meaning of 42 U.S.C. § 1988, California Code of Civil Procedure
5 §1038, and Rule 11 of the Federal Rules of Civil Procedure.

6 AS A SEVENTEENTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
7 complaint, defendants allege that plaintiff's complaint, in its entirety, is barred by the applicable
8 statute of limitations.

9 AS AN EIGHTEENTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
10 complaint, defendants allege that defendant City of Hayward and all defendants sued in their
11 official capacity are immune from the imposition of punitive damages.

12 AS A NINETEENTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
13 complaint defendants allege that because plaintiff's complaint is written in legal conclusory terms,
14 all affirmative defenses available to defendants cannot be fully anticipated or ascertained at this
15 time. Accordingly, defendants reserve the right to assert additional affirmative defenses available
16 to defendants that cannot be fully anticipated or ascertained at this time. Accordingly, defendants
17 reserve the right to assert additional affirmative defenses, if and when the extent that such
18 affirmative defenses are revealed.

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PRAYER

WHEREFORE, defendants pray that plaintiff takes nothing by way of her complaint, that defendants be dismissed from this action and be awarded their costs and attorney's fees, and for any other relief that the court may deem just and proper.

DEFENDANTS' DEMAND FOR TRIAL BY JURY

To the clerk of the above entitled court:

PLEASE TAKE NOTICE that these answering defendants herein demand a trial by jury as to all issues triable thereby, herein.

DATED: February 25, 2008

MICHAEL S. LAWSON, City Attorney

By: /s/
JEFFREY A. CAMBRA
Assistant City Attorney
Attorneys for Defendants